

CIVIL SERVICE COMMISSION MINUTES

SEPTEMBER 29, 2004

A meeting of the Civil Service Commission was held at 2:30 p.m., in the 6th Floor Tower at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Marc Sandstrom
A.Y. Casillas
Gordon Austin
Barry I. Newman
Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamarly, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

October 20, 2004

**COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
SEPTEMBER 29, 2004**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: 6th Floor (Tower) Conference Room,
1600 Pacific Highway, San Diego, California

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
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COMMENTS: Motion by Casillas to approve all items not held for discussion; seconded by Austin. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.**

A. Commissioner Sandstrom: Richard Pinckard, Esq., on behalf of **2004-07**, former Deputy Sheriff-Detentions/Court Services, appealing an Order from the Sheriff's Department.

B. Commissioner Krauel: Richard Pinckard, Esq., On behalf of **2004-09**, Deputy Sheriff-Detentions/Court Services, appealing an Order from the Sheriff's Department.

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision (a) of Government Code Section 54956.9) The Copley Press, Inc. v. Superior Court, Court of Appeal No. D042251

**OPEN SESSION AGENDA
County Administration Center,
6th Floor (Tower) Conference Room**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

WELCOME

1. Welcome Patt Zamary, newly appointed Executive Officer.

Patt Zamary responded to welcoming comments by President

Sandstrom on behalf of the Commission. Patt also thanked staff for its assistance in helping her assimilate to this new position.

MINUTES

2. Approval of the Minutes of the regular meeting of September 1, 2004.

Approved.

CONFIRMATION OF ASSIGNMENTS

3. Commissioner Austin: Kenneth Hamilton, Esq., on behalf of **2004-10**, former Deputy Probation Officer, appealing an Order from the Probation Department.

Confirmed.

4. Commissioner Sandstrom: Julie Buechler, Esq., on behalf of **2004-11**, Deputy Sheriff-Detentions/Court Services, appealing an Order from the Sheriff's Department.

Confirmed.

5. Commissioner Krauel: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Donna Collette**, Detentions Processing Supervisor, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

WITHDRAWALS

6. Commissioner Austin: Ted Burnett, SEIU Local 535, on behalf of **Bridgette Hunter**, former Protective Services Worker II, appealing an Order of Removal from the Health and Human Services Agency (HHSA).

Withdrawn.

DISCIPLINES

Findings

7. Commissioner Sandstrom: Richard Pinckard, Esq., on behalf of **2004-07**, former Deputy Sheriff-Detentions/Court Services, appealing an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee is charged with Cause I - Failure of good behavior (mistreated and physically abused an inmate in custody); Cause II - Failure of good behavior (use of force); Cause III - Negligence; Cause IV - Inefficiency (inaccurately reported use of force); Cause V - Dishonesty; Cause VI - Insubordination; Cause VII - Inefficiency; and Cause VIII - Guilty of Acts which are Incompatible with and/or Inimical to the Public Service.

This hearing pertained to an appeal by a Deputy Sheriff-Detentions of an Order of Termination. The Appellant was charged with improper use of force, dishonesty and related misconduct in connection with an incident in the Central Jail facility. At his request, the hearing was closed. The incident involved an altercation between two inmates. The Appellant, accompanied by two other deputies, subdued the altercation. During the altercation, Appellant properly applied pepper spray. However, he was charged with applying the spray again after the altercation. The inmate was allegedly handcuffed and on his knees at the time of this additional spraying. Appellant denies this charge. The primary issue in the appeal was whether or not he sprayed the inmate after the altercation. There was conflicting evidence and testimony on this factual issue. Two inmates and one deputy testified that Appellant did spray. However, the deputy did not see the actual spray but based his conclusion on the movement of Appellant, the reaction of the inmate, and other circumstances. On the other hand, two deputies testified that Appellant did not spray. However, one of the deputies left for a short period and the other deputy's observation of the incident was subject to distractions and sight obstructions. The physical evidence was inconclusive. Nevertheless, when all of the evidence was weighed in its totality, the hearing officer determined that Appellant sprayed the inmate when he was restrained and under control.

All charges under Causes I through V and VII and VIII were proven. Employee is guilty of Cause I, Cause II, Cause III, Cause IV, Cause V, Cause VII. Employee is not guilty of Cause VI. It is therefore ordered that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Sandstrom to approve Findings and Recommendations; seconded by Casillas. Carried.

Commissioner Austin commented that he would be voting against the recommendation based on his review of the tape-recorded hearing, as well as his review of the file.

He came to a different conclusion and believed that the preponderance of evidence against Employee was not proven.

AYES: SANDSTROM, CASILLAS, NEWMAN, KRAUEL
NOES: AUSTIN
ABSTENTIONS: NONE
ABSENT: NONE

8. Commissioner Krauel: Richard Pinckard, Esq., on behalf of 2004-09, Deputy Sheriff-Detentions/Court Services, appealing an Order from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2004-09 from a written Order in the Sheriff's Department was presented to the Civil Service Commission. The Commission appointed Francesca Krauel, one of its members, to hear the appeal and submit findings and recommendations to the Civil Service Commission. The Hearing Officer finds that prior to the commencement of the hearing, the parties entered into an agreement whereby all issues between the parties are resolved and the appeal is withdrawn. A copy of the agreement and the letter of withdrawal are incorporated by reference. The undersigned Hearing Officer concludes that the Commission is not required to take further action on the appeal. It is therefore recommended that the Commission receive and approve the Hearing Officer's report; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve Findings and Recommendations; seconded by Austin. Carried.

DISCRIMINATION

Findings

9. Commissioner Krauel: **Gerald Ford**, former Intermediate Clerk, HHSA, alleging harassment and discrimination based on sex, sexual identity and disability by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on July 21, 2004 the Commission appointed Francesca Krauel to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received

and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of gender, sexual identity and disability discrimination and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a findings of no probable cause to believe that Complainant has been unlawfully discriminated against; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Krauel to approve Findings and Recommendations;
seconded by Newman. Carried.**

SELECTION PROCESS

Findings

10. Commissioner Austin: Laurence Haines, Esq., on behalf of **Deborah Allen**, Applicant, appealing her non-selection for the classification of Public Health Nurse IV by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on July 21, 2004, the Commission assigned Commissioner Gordon Austin to conduct a hearing on the appeal of Deborah Allen regarding her non-selection for the classification of Public Health Nurse IV by the Health and Human Services Agency. A hearing was held to conduct an in-camera review of Ms. Allen's background investigation file. All testimony was taken under oath and the proceedings were tape-recorded (except for the in-camera review).

Appellant is a former County employee who applied for a position in the jobclassification of Public Health Nurse IV in the Health and Human Services Agency. The Agency performed a routine background investigation. Thereafter, it rejected the Appellant's application on the basis that it uncovered "negative information." At the Commission hearing, Appellant proved that the Agency relied on insufficient information to reject her application on that basis. It is therefore recommended that Appellant's appeal be granted as follows: that the record of the Agency's negative background investigation determination be sealed and disregarded in any future selection process; that the Commission read and file this report; and that the proposed decision shall become

effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Casillas. Carried.

OTHER MATTERS

Seal Performance Appraisal

11. **Rafael Lopez**, Administrative Analyst III, HHSA, requesting the sealing of a Performance Appraisal for the period January 12, 2003 to January 11, 2004.

RECOMMENDATION: Consider all written and verbal input.

Several parties addressed this issue: Dennis Floyd, Sr. Deputy County Counsel, Mr. Lopez, Pat Zamary, Executive Officer, and Commissioner Newman. Ms. Zamary stated that the legal and equity matters are separate issues and that the equity matter seems to be on the side of the Employee. Commissioner Newman requested that this matter be tabled due to its uniqueness, to allow the Agency to reconcile the Findings of this Commission and the Performance Appraisal referenced above. Following the Agency's determination, the Performance Appraisal issue can be addressed by the Commission.

Motion by Newman to table this matter; seconded by Krauel. Carried.

Ratification of Medical Providers

12. Ratification of **Robert E. Brizendine, Ph.D.**, as an additional name to the list of medical providers to be used for fitness for duty examinations at the request of the Department of Human Resources.

13. Ratification of **Dominick Addario, M.D.**, as an additional name to the list of medical providers to be used for fitness for duty examinations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify Item Nos. 12 & 13.

Item Nos. 12 and 13 ratified.

Extension of Temporary Appointments

14. Department of Planning and Land Use

1 Assistant Engineer (Eric Ng)

15. Department of Agriculture, Weights and Measures

- A. 2 Insect Detection Specialists I (Dinna Estrella, Sharrod Jefferson)
- B. 3 Insect Detection Specialists II (Travis Elder, Roy Joseph, Celeste Penn)

RECOMMENDATION: Ratify Item Nos. 14 & 15.

Commissioner Newman questioned 15.B. above. Moises Ortiz from the Land Use Environment Office was available to address this matter.

Item Nos. 14 and 15 ratified.

16. Public Input.

Commissioner Newman requested the inclusion of correspondence from President Sandstrom that was previously sent, confidentially, to all Commissioners. The matter relates to the Executive Officer position, and by its inclusion becomes a public document.

ADJOURNMENT: 3:45 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: OCTOBER 20, 2004